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21 TD Bank USA, N.A.

22 UNITED STATES DISTRICT COURT

23 DISTRICT OF ARIZONA

24 Janelle M. Gephart,

25 No. 2:22-cv-01652-SMM

26 Plaintiff,

27 v.

28 TD Bank USA, N.A.; et al.,

DEFENDANT TD BANK USA, N.A.'S  
OBJECTION TO PROPOSED ORDER ON  
STIPULATION OF DISMISSAL

29 Defendants.

30 On October 2, 2023, Ms. Gephart filed a request for a voluntary dismissal under  
31 Rule 41(a)(2), but only on condition that “each party . . . bear their own costs and fees.”  
32 (ECF Doc. 34.) On October 3, Defendant TD Bank USA, N.A., filed a response in  
33

1 opposition to that conditional motion. (ECF Doc. 35.) TD's response stated that "TD does  
 2 not oppose the dismissal with prejudice — it opposes only the condition in Ms. Gephart's  
 3 request that would preclude TD from seeking costs and fees." (*Id.* at 2.)  
 4

5 Today, October 5, Ms. Gephart filed a Stipulation of Dismissal with Prejudice,  
 6 which does not mention fees or costs. (ECF Doc. 36.) TD has no objection to the  
 7 stipulation itself, which is a form that TD's attorney had proposed to Ms. Gephart's  
 8 attorneys in September, which they rejected at the time. But the stipulation attaches a  
 9 proposed order, which provides that "[e]ach party shall bear its own costs and attorney  
 10 fees." (ECF Doc. 36-1.) The stipulation itself contains no such language, nor would TD  
 11 have agreed to any such language; in fact, TD's attorney proposed the stipulation that Ms.  
 12 Gephart filed today for the express purpose of removing that language from a stipulation  
 13 that Ms. Gephart's attorneys had proposed. TD's attorneys had not seen the proposed order  
 14 before it was filed.  
 15

16 TD therefore objects to the language in the proposed order that "[e]ach party shall  
 17 bear its own costs and attorney fees," for the reasons stated in Defendant TD Bank USA,  
 18 N.A.'s Memorandum in Opposition to Plaintiff's Conditional Motion for Dismissal (ECF  
 19 Doc. 35).  
 20

21 October 5, 2023.  
 22

23 BARNES & THORNBURG LLP  
 24

25 /s/ Brian Melendez  
 26

27 Brian Melendez  
 28 Attorney for Defendant  
 TD Bank USA, N.A.  
 29